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March 11, 1994

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton  
Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: MM Docket 92-266

Dear Mr. Caton:

On behalf of ValueVision International, Inc., enclosed for filing in the above-referenced proceeding are an original and eleven (11) copies of Motion to Strike Response of Tele-Communications, Inc. and Reply to Response of Tele-Communications, Inc.

If there are any questions concerning this matter, please communicate directly with the undersigned.

Yours sincerely,

  
Christopher M. Heimann

Enclosures

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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MAR 11 1994

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )

Implementation of Sections of )  
the Cable Television Consumer )  
Protection and Competition Act )  
of 1992 )

Rate Regulation )

MM Docket 92-266

To: The Commission

MOTION TO STRIKE RESPONSE OF TELE-COMMUNICATIONS, INC.

ValueVision International, Inc. ("ValueVision") respectfully files this Motion to Strike the Response of Tele-Communications, Inc. ("TCI") to ValueVision International, Inc.'s Supplement to Petition for Reconsideration, filed in the above-captioned proceeding.

On November 23, 1993, ValueVision filed by motion a Supplement to its pending petition for reconsideration, setting forth recent data concerning the leased access rates being charged to ValueVision by cable operators (including TCI) under the Commission's new "implicit fee" standard. On January 18, 1994, almost two months later, TCI filed the subject response -- but never served ValueVision with it. Indeed, TCI never even included a certificate of service with the response, as required by Section 1.47 of the rules. ValueVision only recently

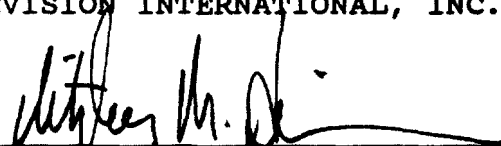
discovered the existence of TCI's response, in the course of a routine search of the Commission's docket files.

Because TCI failed to serve ValueVision with a response to ValueVision's supplement, and because the response is grossly untimely,<sup>1/</sup> ValueVision moves that the Commission strike the response of TCI to that supplement. However, in the event the Commission decides to consider TCI's response, we respectfully request that the Commission accept for filing the attached reply, which has been filed as promptly as practicable after the discovery of TCI's response.

Respectfully submitted,

VALUEVISION INTERNATIONAL, INC.

By:

  
William R. Richardson, Jr.  
Christopher M. Heimann

Wilmer Cutler & Pickering  
2445 M Street, N.W.  
Washington, D.C. 20037-1420  
(202) 663-6000

Its Attorneys

March 11, 1994

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<sup>1/</sup> Counsel for ValueVision provided counsel for TCI with a copy of ValueVision's motion for leave to file its supplement on November 29, 1993. Thus, TCI's response to the motion was due on December 13, 1993. 47 C.F.R. § 1.45(a).

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Implementation of Sections of  
the Cable Television Consumer  
Protection and Competition Act  
of 1992

Rate Regulation

MM Docket 92-266

To: The Commission

REPLY TO RESPONSE OF TELE-COMMUNICATIONS, INC.

ValueVision International, Inc. ("ValueVision") respectfully files this Reply to the Response to ValueVision's Supplement to Petition for Reconsideration, filed by Tele-Communications, Inc. ("TCI") in the above-captioned proceeding.<sup>1/</sup>

1. In its Supplement, ValueVision established that, under the Commission's new "implicit fee" rules for commercial leased access, several cable operators -- including but not limited to TCI -- have demanded rates that are 600% to 1100% higher than those negotiated by ValueVision with cable operators

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<sup>1/</sup> In an accompanying pleading, ValueVision has moved to strike TCI's Response both as untimely, and because of TCI's failure to serve ValueVision. If the Commission nevertheless decides to accept TCI's response, ValueVision submits this reply pursuant to Section 1.45 of the rules.

(including TCI) before the Commission's rules came into effect.<sup>2/</sup> TCI does not dispute these new rates. It correctly notes that "all [ValueVision] is accusing TCI of doing is acting within" the new implicit fee rules. Response at 4. But that is precisely the problem identified in ValueVision's petition. Following the release of the Commission's leased access rules, TCI altered its leased access policy to make the purchase of competitive access far more expensive than it was before the Commission adopted the implicit fee construct -- even though the Commission made clear that cable operators need not charge the maximum rates under the new rules. Rate Regulation, 8 FCC Rcd 5631, 5951 ¶ 519 (1993).

2. TCI also claims that the reason three of its systems "were forced to drop certain programmers" was not because they could not pay these exorbitant leased access rates, but "because of must carry obligations imposed on them by the 1992 Cable Act and the Commission's implementing regulations." Response at 5. This makes no sense. A cable system's obligation to set aside 10-15% of its channels for commercial leased access is wholly independent of its obligation to set aside additional channels for local television stations. See 47 U.S.C. § 532(b).

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<sup>2/</sup> TCI claims that ValueVision failed "to inform the Commission that the prior rate was for part-time, fully preemptible carriage." TCI Response at 3. In fact, ValueVision expressly noted that the rates it was comparing were extrapolations of part time rates. ValueVision Supplement at 3. And the Commission has made clear that "[m]aximum rates for shorter periods can be calculated by prorating the monthly maximum rate." Rate Regulation, 8 FCC Rcd 5631, 5951 ¶ 518 (1993) (emphasis added).

TCI therefore could not have set aside channels used for commercial leased access to fulfill its must-carry obligations.<sup>3/</sup>

3. Finally, TCI restates that ValueVision is somehow seeking preferential commercial leased access treatment for home shopping channels. Response at 5. This is incorrect. All ValueVision seeks is the application of the market rate for home shopping programs -- a rate that existing home shopping networks QVC and HSN have paid for cable access since their inception.<sup>4/</sup> This market rate for home shopping will achieve Congress' leased access objectives without encouraging migration or undermining the financial position of cable operators. As Time Warner has recognized, "looking to the explicit fee currently charged to home shopping programmers makes sense." Time Warner Opp. at 33 n.96.

4. Congress found in the 1992 Cable Act that leased access had been a dead letter. As recent correspondence by Chairman Inouye (attached) makes clear, the 1992 Act was designed

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<sup>3/</sup> TCI also claims that its Buffalo system did not "drop" ValueVision. Response at 5. This is nonsense. As the attached letter from TCI to ValueVision admits, ValueVision was "willing to renew [its] order." TCI summarily dropped ValueVision -- i.e., refused to renew its contract -- because it was "advised not to take the order" by "TCI Corporate."

<sup>4/</sup> ValueVision Reply to Oppositions to Petition for Reconsideration, filed August 2, 1993, at 3. In light of Viacom's successful bid for Paramount, it is now clear that TCI may continue its affiliation with QVC and HSN through Liberty. Given these vertical relationships, it is particularly important that competing home shopping programmers like ValueVision not be placed at a competitive disadvantage to QVC and HSN through the establishment of commercial leased access rates which far exceed those consistently charged to QVC and HSN.

to "provide competition to existing cable programming providers." The authors of that Act have serious concerns, however, that the implicit fee concept "may not adhere to Congress's intent and may not realize the promise of leased access" as "a genuine outlet for both commercial and non-profit entities."

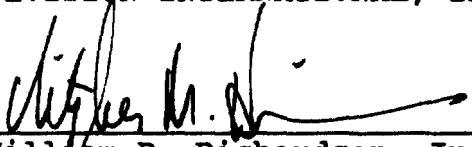
The continued non-existence of leased access programming on cable systems today is clear corroboration of such concerns. Almost a year ago, the Commission adopted commercial leased access rate regulations that it acknowledged "will need refinement." 8 FCC Rcd 5936 at ¶ 491. Every month that passes without making those refinements enables cable operators to continue to demand commercial leased access rates that serve as impenetrable barriers, and thereby to continue to stymie competition. The market effects of continued inaction by the Commission are particularly unfortunate for public companies such as ValueVision. We therefore urge the Commission to remedy the problems of commercial leased access without further delay, in

order finally to provide the "genuine outlet" intended in the  
1992 Cable Act.

Respectfully submitted,

VALUEVISION INTERNATIONAL, INC.

By

  
\_\_\_\_\_  
William R. Richardson, Jr.  
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Wilmer, Cutler & Pickering  
2445 M Street, N.W.  
Washington, D.C. 20037

Its Attorneys

March 11, 1994



We're taking television  
into tomorrow



TCI of New York, Inc.

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# of pages 1

To <b>CHRIS HEIMANN</b>	From <b>Lisa - VALUEVISION</b>
Co.	Co.
Dept.	Phone #
Fax # <b>202 663 6367</b>	Fax #

716  
822-1113

August 5, 1993

Ms. Sarah Harvey  
VALUE VISION  
Suite 500  
3300 East 1st Avenue  
Denver, Colorado 80206

Dear Sarah:

Effective August 12th we must discontinue carrying Value Vision on TCI of Buffalo.

I do understand that you were willing to renew your order with Mark Kennedy at Cable Media for another flight. However, I was advised not to take the order because TCI Corporate was beginning negotiations with Value Vision direct for all TCI systems.

Due to the many issues involved with must carry rules and the FCC, we cannot carry the programming any longer or until the national negotiations are complete.

A final invoice for June and July is enclosed. Please feel free to call me if you have any questions.

Cordially,

TCI CABLE ADVERTISING, INC.

  
Don Angelo  
General Sales Manager

Encl.

Aug. 9, 1993:

Copy of letter and  
original invoice mailed  
to Arnie @ V.V.

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# United States Senate

COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION

WASHINGTON, DC 20510-8128

November 29, 1993

The Honorable Reed E. Hundt  
 Chairman  
 Federal Communications Commission  
 1919 M Street, NW  
 Washington, DC 20554

Dear Chairman Hundt:

I am writing concerning the Commission's implementation of Section 9 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), dealing with leased commercial access.

The 1984 Cable Act requires cable operators to make a certain number of channels available for lease to independent programmers not affiliated with the cable operator. The purpose of these leased access provisions is to promote diversity of information sources to the public. I believe that these leased access provisions are fundamental to a democratic and pluralistic society. The Commission, in its 1990 Cable Report, expressed a similar view.

The record developed during consideration of the 1992 Cable Act, however, revealed that few programmers are able to take advantage of the opportunity to lease channels. One of the primary reasons, as submitted in testimony to the Committee, is that most programmers cannot afford the rates charged by the cable operators. The 1992 Cable Act thus assigned to the Commission the responsibility of ensuring that cable operators charge reasonable rates, terms, and conditions for leased access channels. At that time the 1992 Act was passed, Congress stated its belief that leased access channels would provide competition to existing cable programming providers.

I am concerned that the Commission's initial decision last May establishing rates and conditions for leased access in MM Docket 92-266 may not adhere to Congress's intent and may not realize the promise of leased access. I am particularly concerned about the Commission's decision not to consider a preferential leased access rate for not-for-profit organizations.

In its Rate Order, released in May of this year, the Commission established three different rate categories: for pay services, for "home-shopping" services, and for "all other". The "all other" category includes commercial and not-for-profit

users. By placing non-profits in the same category as advertiser-supported cable TV services, the Commission may have unwittingly made leasing beyond the financial capability of non-profits. Using the example contained in the FCC's decision of a rate of \$0.50 per month, a non-profit lessee would have to pay over \$300 million annually for a single channel reaching all cable subscribers. These figures cast serious doubt on the Commission's view, as expressed in its initial decision, that it expects maximum rates to be "sufficiently low as to attract not-for-profit programmers."

Congress has already expressed a concern about establishing prices for not-for-profit users at the same level as other commercial users:

[B]y establishing one rate for all leased access users, a price might be set which would render it impossible for certain classes of cable services, such as those offered by not-for-profit entities, to have any reasonable expectation of obtaining leased access to a cable system. (1984 House Report at 47)

The Commission's Rate Order included a brief, one-paragraph, discussion of the issue of charges for leased access by non-profits. The Commission itself stated in the order that, due to the few comments received on the leased access issue, "the rules we adopt should be understood as a starting point that will need refinement both through the rule making process and as we address issues on a case-by-case basis." (Rate Order, para. 491)

For all these reasons, I believe the Commission should take another look at the issue of leased access rates, especially for not-for-profit entities. I hope that you will reconsider your rules to comport with the intent of Congress that leased access provide a genuine outlet for both commercial and non-profit entities.

Sincerely,



DANIEL K. INOUE  
Chairman  
Communications Subcommittee

CERTIFICATE OF SERVICE

I, Christopher M. Heimann, hereby certify that on this 11th day of March, 1994, I have caused copies of the foregoing "Motion to Strike Response of Tele-Communications, Inc." and "Reply to Response of Tele-Communications, Inc." to be served by hand or first class mail, postage prepaid, to the following:

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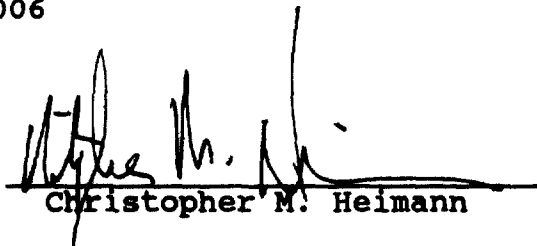
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Christopher M. Heimann

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By Hand